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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NELSON SOSA and RUBEN VELEZ,

Plaintiff,

**Case No.: 20-CV-4705
(MKV)**

-against-

**DECLARATION OF
COUNSEL IN SUPPORT OF
MOTION TO DISMISS**

BENTIS FRESH BREAD INC. (D/B/A BENTI'S FRESH
BREAD INC.), OLDE BAKERY SHIPPE INC. (D/B/A
OLDE BAKERY SHOPPE), ANTHONY BENTIVEGNA,
and LOUIS BENTIVEGNA

Defendants.

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**DECLARATION OF STEPHEN D. HANS, ESQ. IN SUPPORT OF DEFENDANT
ANTHONY BENTIVEGNA AND BENTIS FRESH BREAD, INC. MOTION TO DISMISS
PLAINTIFFS' COMPLAINT FOR FAILURE TO STATE CLAIM**

I, Stephen D. Hans declare under penalty of perjury, pursuant to 28 U.S.C § 1746, that:

1. I represent Defendant Anthony Bentivegna and Bentis Fresh Bread, Inc. and submit the Declaration in support of the motion to dismiss the Plaintiffs' claim against them with prejudice.
2. I am familiar with the facts set forth herein from my review of a file maintained by my office regarding this matter and the docket.

BRIEF SUMMARY OF RELIEF SOUGHT


3. Defendant respectfully repeats that the claims against them be dismissed due to the fact that the Defendants business is exempt to the FLSA
4. The Plaintiff has not pleaded any facts that addressed the Motor Carrier Act exemption nor any specificity as to the acts of the Defendants interstate.
5. As stated in the Co-Defendants motion, no allegation were made to suggest a plausible claim that the Plaintiffs work for their employer was outside the scope of the Motor Carrier Act Exemption.
6. This motion responds to the Amended Complaint filed November 2020 which solely details alleged failure to pay wages and overtime.
7. The Amended Complaint does not mention or reference any facts as to whether there is interstate movement by the Defendants which would involve the Motor Carrier Act.

ARGUMENT

8. Defendant respectfully submits the annexed memorandum of law in support of Defendants' application setting forth the state of law regarding liability, both individual and corporate, and pleading standards surrounding claims arising under the FLSA and NYLL. As well as pleading standards as they relate to plausibility and the Motor Carrier Act Exemption.

Dated: Long Island City
January 15, 2021

STEPHEN D. HANS & ASSOCIATES, P.C.

By: _____ /s/ 
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